

REMARKS

Claims 1 and 3-11 remain in the application without further amendment.

Reconsideration is respectfully requested of the rejection of claims 1, 3, 5, and 10 under 35 USC 103, as being unpatentable over Andrea et al. in view of Usami et al.

As previously explained, the present invention provides a combination of a headphone system as well as a noise cancellation system and further includes the capability of making binaural recordings.

This combination of operative results is provided in part by arranging the microphones used for the noise cancellation function on the outside of the earphone shells so that the microphones can also function in the binaural recording mode.

Andrea et al. relates to an adaptive noise cancellation system used in connection with a headphone. Typically the headset includes a reference microphone, a feedback microphone, and a speaker arranged in a housing. The portion of interest of Andrea et al. is shown in Figs. 4, 8, 9, and 10. In those constructions, a first sensor to sense the ambient noises is provided along with a second sensor to sense the signal in the ear canal of the user and a speaker to produce the local anti-noise and received signals. All of these elements are resident in a headset. As shown in Fig. 11, for example, the external sensor 60 senses the ambient acoustic noise and the in ear sensor 70 also acts as a microphone in the transmit mode, as well as detecting noise in

the ear canal of the user.

In making the present rejection the examiner has modified the structure shown in Andrea et al. and discussed above to somehow include a recording means allegedly shown in Usami et al.

Usami et al. has a headphone unit that incorporates microphones for picking up binaural signals for recording. The Usami et al. system provides some foam reflectors or surfaces that simulate the pinna of a human, thus enhancing the imaging of the binaural recording to be made.

It will be initially noted that Usami et al. does not disclose any recording means but simply provides the microphones mounted on the headphone unit to pick up the signals used in making a binaural recording.

It is respectfully submitted that there is no suggestion in Andrea et al. to somehow employ the binaural recording microphones of Usami et al. in an effort to result in a system such as presently recited in the claims of this application.

In the first place, one has to discard the two microphones or sensors of Andrea et al., thereby destroying the basic teaching of the Andrea et al. invention. Furthermore, Andrea et al. already shows reference elements 60' in Fig. 10 on the outside of the headphones.

Therefore, there is no suggestion in Andrea et al. to make the combination with Usami et al., as suggested by the examiner.

It is respectfully submitted that the mere fact that the prior art may be modified to reflect features of the claimed

invention would not make such modification, and hence the claimed invention, obvious unless the desirability of such modification is suggested in the references. The invention set forth in the claims can not be used as an instruction manual or "template" to piece together teachings of the prior art, so that the claimed invention is rendered obvious, In re Fritch, 972 F 2nd 1260, 23USPQ 2nd 1780 (Fed. Cir. 1992).

As noted hereinabove, there is no suggestion in either reference of any benefits to be had by discarding the sensors of Andrea et al. and substituting the binaural microphones of Usami et al. To do so would destroy the functionality of the Andrea et al. system.

Accordingly, in view of the above, it is respectfully submitted that the acoustic apparatus, as taught by the present invention and as recited in the amended claims, is neither shown nor suggested in the cited references, alone or in combination.

The references cited as of interest have been reviewed and are not seen to show or suggest the present invention as recited in the amended claims.

Favorable reconsideration is earnestly solicited.

Respectfully submitted,
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